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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,444	09/29/2005	Yoshikazu Tani	TANI3011/REF	3031
23364 7590 05/04/2009 BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314-1176				
EXAMINER				
LE, HUYEN D				
ART UNIT		PAPER NUMBER		
3751				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/551,444

Applicant(s)

TANI, YOSHIKAZU

Examiner

Huyen Le

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 7, 8 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 7, 8 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 09/29/2008 & 11/3/2008
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of species I, Figs. 1-2, sub-species 1, Fig. 23, in the reply filed on 01/23/2009 is acknowledged.
2. Claims 1, 4, 7, 8 and 10 are readable on the species.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 4 and 7 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 7,201,526 in view of Mureau (2,309,861). Claim 1 of the patent discloses all the limitation of claim 1 of the present invention except the locking portions of the leading tube (filler member) and the main tube. Mureau, however, teaches a cosmetic cartridge 11 (filling member) being separate from the main body 10 and having locking member 23 for connecting the

locking member on the inner side of the main body 10 as shown in Fig. 2. It would have been obvious to one of ordinary skill in the art to provide the filling member and main body with a locking member in view of the teaching of Mureau for removably connecting to the main body of the device.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1, 4, 7, 8 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Regarding claim 1, it is unclear as to what applicant means by "a shaft portion extending from a bottom portion of the said operating tub and said movable body so as to be non-rotatable". The shaft portion 3c extends from the bottom portion of the operation tub 3 but does not extend from the movable body 6. The shaft 3c is rather rotatable with the operation tube 3 and non movable in the axial direction.

7. Regarding claim 1, it is unclear as to whether or not the movable body is intended to be part of the claimed combination, i.e., line 3 of this claim indicates that the movable body is not intended to be claimed (in the preamble), however, the language on lines 8 and 17 of this claim seems to indicate that the male thread (of movable body) is intended to be claimed. Also, the language "the movable body so as to be non-rotatable and movable an axial direction" on lines 20-21 of this claim seems to indicate that the movable body 6 is intended to be claimed. If applicant intends to claim the

movable body, an antecedent basis for the movable body should be positively defined in the body of the claim. If the applicant not intend to claim the movable body, "adapted to be/for" language should be used when referring thereto, i.e., "male thread is adapted for" and "the movable body adapted for being non-rotatable and movable in the axial direction.

8. Claims 4, 7-8 and 10 are similarly rejected, as they depend from claim 1.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 4, 7, 8 and 10 as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai (6,793,431) in view of Mureau (2,309,861).

Tsai discloses an applying filler extruding container comprising: a leading tube formed in a tubular shape (the front smaller diameter portion of body 10) and having a discharge port at a leading end; and a main body side assembly 10, an engagement portion of a male thread and a female thread (between members 13 and 12), and a rotation preventing portion 12 in a main body side tube portion formed in a tubular shape, wherein an inner portion of the leading tube is formed as a filling member, wherein the rotation preventing portion 12 is formed by engaging a main body tube having the female thread engaging with the male thread provided in an outer surface of the movable body 13, an operating tube 20 coupled to a rear end side of the main body

tube, a shaft body portion 21 extended from a bottom portion of the operating tube 20 and to be rotatable and non-movable in the axial direction.

Tsai does not teach the filling member (the front smaller diameter portion of body 10) being separate and having a locking portion provided in an outer surface for inserting and coupling to a locking portion provided in an inner surface of the main body tube. Mureau, however, teaches a cosmetic cartridge 11 (filling member) being separate from the main body 10 and having locking member 23 for connecting the locking member on the inner side of the main body 10 as shown in Fig. 2.

Therefore, it would have been obvious to one of ordinary skill in the art to modify the filling member (the front smaller diameter portion of body 10) of Tsai to be separate from and to have a locking member and to provide locking member on the main body in view of the teaching of Mureau for removably connecting to the main body of the device for easy replacement.

Regarding claim 4, the limitation is met by parts 16 and 18.

Regarding claim 7, the engagement portion constitutes a ratchet mechanism.

Regarding claims 8 and 10, the concave portions (grooves) is located at the rear end of movable member 13 and the convex portions (protrusions) is located on the peripheral of the shaft 21 and protrusion extends all the way to the bottom surface of the operation tube 20 (see Figs. 1-3).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Huyen Le/
Primary Examiner, Art Unit 3751